IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 187 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVENDRA SHANKERLAL OSWAL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR HRIDAY BUCH for Applicant(s) : 1,
MR.AJ DESAI APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR KI KAZI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/10/2007

ORAL JUDGMENT

1. The petitioner, original complainant, has invoked the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure,

1973 (for short, “the Code”) with a prayer to set aside order dated 04.04.2007 of learned Additional Sessions Judge, Court No.6, Ahmedabad in Criminal Misc. Application No.1196 of 2007, whereby respondent No.2 herein was released on bail on several conditions.

2. The impugned order was challenged mainly on the grounds that it was perverse, illegal and issued in improper exercise of discretion in so far as the relevant facts of the respondent absconding before arrest and being involved in serious offence of conspiracy to commit murder were not considered and only on the ground of chargesheet having been filed and on the so-called principle of parity he was released. The other ground of challenge was that the respondent had already violated the conditions on which he was released on bail in so far as he had left the territory of Gujarat without permission and even committed another offence for which an F.I.R. was lodged in Kagdapith Police Station.

3. By referring affidavit of the Investigating Officer, it was submitted by learned A.P.P. Mr.Desai that the respondent had misused his liberty and pursuant to the alleged breach of the condition of bail, Criminal Misc. Application No.3159 of 2007 was already submitted to the learned Sessions Judge who was seized of the matter.

4. In the above facts and circumstances, not discussing the facts emerging from the investigation of the first offence, as requested by learned counsel on both sides, this Court is not inclined to interfere with the impugned order granting bail to respondent No.2; following the principles laid down by the Hon'ble Supreme Court for cancellation of bail and, particularly, in view of the conditions to ensure availability of the petitioner for trial. It is however clarified that this Court has not examined the allegations of violation of the conditions of bail in view of the fact that the Sessions Court

is seized of the application based on those allegations and learned counsel for the parties have agreed that that application would be decided on its own merits in accordance with law and without being influenced by the fact that this Court was not inclined to cancel the bail granted to the respondent on the grounds of apparent infirmities and lack of discussion in the impugned order of most of the important considerations relevant for grant of bail.

5. Accordingly, present petition is dismissed with liberty to the parties to canvass all the available contentions before the Sessions Court in the application pending before it for cancellation of bail. Rule is discharged with no order as to costs.

(D.H.WAGHELA, J.)

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